IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

State of Rajasthan Vs. Harihar Kurup & Another.
(S.B. Civil Writ Petition No.3452/1995.)

DATE OF ORDER : December 8th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. S.N. Tiwari, Dy. G.A.
Mr. D.K. Parihar for respondent.

BY THE COURT :

By this writ petition, the State is seeking to bring under challenge the validity of judgment dated 03.05.1994 passed by the Labour Court, Bikaner under Section 33-C (2) of the Industrial Disputes Act, 1947 (for short, "the Act" hereinafter) holding that respondent workman is entitled for pay for the post of Munshi Grade-I on the principle of "equal pay for equal work" and respondent was therefore entitled to basic-pay alongwith D.A. for the period commencing from 24.05.1982 to 30.06.1990.

As per the facts of the case, an application was moved by respondent No.1 under Section 33-C (2) of the Act before the Judge, Labour Court, Bikaner in which it was claimed that he was working on the post of Store Munshi Grade-II since 02.12.1982 but he was discharging the work of Munshi Grade-I (LDC). The respondent expressed grouse that he was however paid emoluments for the

post of Munshi Grade-II though he was entitled to the emoluments of the post of Munshi Grade-I on the principle of “equal pay for equal work” because he was performing the duties of Munshi Grade-I.

The application filed under Section 33-C (2) of the Act was opposed by the petitioner and reply was filed by the department. It was specifically replied by the department that the respondent (herein) was appointed as Munshi Grade-II and it was submitted in the written-statement that respondent No.1 did not work on the post of Munshi Grade-I (LDC) since his appointment with effect from 02.12.1982 and, in fact, he was appointed on muster-roll basis and he was declared semi-permanent on the post of Beldar. The petitioner contended in the written-statement that the workman's claim does not fall under Section 33-C (2) of the Act because the qualifications for the posts of Munshi Grade-II and Munshi Grade-I (LDC) are altogether different. The keystone contention of the petitioner before the Labour Court was that no adjudication upon the question of entitlement for particular pay-scale can be made by the Labour Court in exercise of power under Section 33-C (2) of the Act. The learned Judge, Labour Court, Bikaner vide impugned order dated 13.05.1994 passed award in favour of the respondent workman and directed the petitioner department to pay salary to the workman for the post of Munshi Grade-I for the period commencing from 24.05.1982 to 30.06.1990 on the principle of equal pay for equal work.

On behalf of the petitioner State, learned Dy. G.A. Shri Tiwari contended that there is no power vesting in the Labour Court to adjudicate upon disputed claim and pass award of entitlement in favour of the workman under Section 33-C (2) of the Act whereas according to Section 33-C (2) of the Act where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to

the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

While inviting attention towards Section 33-C (2) of the Act, it is submitted by the learned Dy. Government Advocate Shri Tiwari that the learned Judge, Labour Court has committed error in allowing pay-scale of Munshi Grade-I the post for which the respondent was neither appointed nor granted semi-permanent status. It is vehemently argued that under Section 33-C (2) the Labour Court can exercise powers as executing court for payment/recovery of an undisputed amount or an existing right; but, the learned Judge, Labour Court has exceeded jurisdiction while allowing the pay-scale of the post of Munshi Grade-I upon which the respondent No.1 was not appointed nor the respondent ever worked on that post. The learned Deputy Government Advocate drew attention of the Court towards judgments reported in (1995) 1 SCC 235, Municipal Council, Delhi Vs. Ganesh Rajjak ; (2001) 1 SCC 73, State Bank of India Vs. Ram Chandra; and, (2005) 8 SCC 58, State of UP & Another Vs. Brijpal Singh. On the strength of his contentions advanced by the learned Dy. G.A. while relying upon the aforesaid judgments, it is prayed that the impugned judgment may be set aside.

On the other hand, learned counsel for the respondent workman Shri D.K. Parihar contended that respondent proved before the learned Judge, Labour Court that he worked as Munshi Grade-I during the period commencing from 24.05.1982 to 30.06.1990, therefore, when the respondent actually worked on the said post then, obviously, the petitioner department cannot dispute the claim of the workman to salary of the post on which the respondent workman

worked during the said period irrespective of the fact that he was not appointed to that post. It is vehemently contended by the learned counsel for the respondent that the petitioner department took work from the respondent for the post of Munshi Grade-I, therefore, on the basis of the evidence led by the respondent workman, the Labour Court has rightly passed the impugned award for granting legitimate claim of the workman.

Without prejudice to the above submission, learned counsel for the respondent invited attention of the Court towards judgments reported in 2003 WLC (UC) 742; 1983 WLN (UC) 96 and judgment dated 26.05.1997 passed by the Division Bench of this Court in D.B. Special Appeal No.646/1996 and argued that even if ultimately this Court comes to the conclusion that the Labour Court had no jurisdiction under Section 33-C (2) of the Act, in exercise of original jurisdiction of this Court under Article 226 of the Constitution of India, while appreciating the finding of the learned Labour Court arrived at on the basis of the evidence led by the workman, the award may be maintained.

I have considered the rival submissions and perused the record.

It is apparent from the pleadings that the respondent No.1 was admittedly not appointed to the post of Munshi Grade-I but only on the basis of his statement recorded before the Labour Court that he performed the duties of the post of Munshi Grade-I he pressed his claim under Section 33-C (2) of the Act. However, in exercise of power under Section 33-C (2) of the Act obviously the Labour Court cannot adjudicate upon a disputed claim and, the power under the Section enables the Labour Court to pass orders for payment/recovery of undisputed claim or a right decided. The proceedings under the aforesaid section envisages only exercise of jurisdiction in the nature of an executing Court by the Labour Court, therefore, indisputably the Judge, Labour Court cannot

pass award while adjudicating upon disputed facts to resolve the claim of workman under Section 33-C (2) of the Act.

In the case of State of UP & Another Vs. Brijpal Singh, reported in (2005) 8 SCC 58 (supra), after having taken into consideration all the earlier judgments, the Hon'ble Supreme Court has held as follows :

> "The workman can proceed under Section 33-C (2) only after the Tribunal has adjudicated on a complaint under Section 33-A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that oder and reinstated the workman. A proceeding under Section 33-C (2) is a proceeding in the nature of execution proceeding in which the Labour Court calculates the amount of money due to a workman from the employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. The right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation tot he relationship between the industrial workman and is employer. It is not competent to the Labour Court exercising jurisdiction under Section 33-C(2) to arrogate to itself the functions of an Industrial Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter of an industrial dispute in a reference under Section 10 of the Act.
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> The Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C (2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental tot he Labour Court's power under Section 33-C(2) like that of the executing court's power to interpret the decree for the purpose of its execution. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Sections 33-C (2) of the Act while the latter does not."

On the basis of the above judgments, it may be held that the learned Judge, Labour Court has exceeded his jurisdiction, therefore, the impugned

award cannot be sustained in the eye of law having been passed under the jurisdiction not vested in the Labour Court in exercise of power under Section 33-C (2) of the Act.

With regard to the argument of the learned counsel for the petitioner that upon the facts of the case, in exercise of jurisdiction under Article 226 of the Constitution of India, this Court may not interfere in the finding arrived at by the learned Judge, Labour Court upon the claim of the workman. Upon the factual aspect of the matter, as per the learned counsel for the respondent, it has been proved by respondent No.1 before the learned Judge, Labour Court that he performed the duties of the post of Munshi Grade-I, therefore, this Court can grant relief to the workman. This contention is not tenable in the eye of law and is devoid of force inasmuch as in its written-statement the petitioner throughout disputed the claim of the workman, therefore, while the question of fact has not been lawfully resolved by the Labour Court, even in exercise of jurisdiction under Article 226 of the Constitution of India, this Court would not be persuaded to maintain the finding of the Labour Court which is obviously vitiated by conspicuous illegality.

In the result, this petition is allowed. The impugned award dated 30.05.1994 passed by the Judge, Labour Court, Bikaner in Industrial Dispute Case No.27/1990 is set aside.

There shall, however, be no order as to costs.

(Gopal Krishan Vyas) J.